IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8361 of 1995

with

SPECIAL CIVIL APPLICATION No 1301 of 1994

with

SPECIAL CIVIL APPLICATION No 4837 of 1995

with

SPECIAL CIVIL APPLICATION No 9880 of 1994

with

SPECIAL CIVIL APPLICATION No 3107 of 1999

with

SPECIAL CIVIL APPLICATION No 8039 of 1993

with

SPECIAL CIVIL APPLICATION No 10309 of 1995

with

SPECIAL CIVIL APPLICATION No 1305 of 1994

with

SPECIAL CIVIL APPLICATION No 5840 of 1995

with

SPECIAL CIVIL APPLICATION No 10778 of 1995

with

SPECIAL CIVIL APPLICATION No 8002 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAYBHAI INDUPRASAD BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8361 of 1995
   MR AJ PATEL for Petitioners
   MR LR PUJARI, AGP for Respondent

2. Special Civil ApplicationNo 1301 of 1994
   MR AJ PATEL for Petitioners
   MR LR PUJARI, AGP for Respondent

3. SPECIAL CIVIL APPLICATION No 4837 of 1995

MR AJ PATEL for the Petitioner
MR LR PUJARI, ASTT GOVT PLEADER

4. SPECIAL CIVIL APPLICATION No 9880 of 1994
MR SM SHAH for petitioner
MR LR PUJARI ASSTT GOVT PLEADER

5. SPECIAL CIVIL APPLICATION No 3107 of 1999
MR CB DASTOOR for Petitioner
MR LR PUJARI ASSTT GOVT PLEADER

6. SPECIAL CIVIL APPLICATION No 8039 of 1993
MR PJ VYAS for petitoner
MR LR PUJARI ASSTT GOVT PLEADER

7. SPECIAL CIVIL APPLICATION No 10309 of 1995
MR YOGESH RAVANI for Petitioner
MR IM PANDYA ASSTT GOVT PLEADER

8. SPECIAL CIVIL APPLICATION No 1305 of 1994
MR AJ PATEL for petitioner
MR IM PANDYA ASSTT GOVT PLEADER

9. SPECIAL CIVIL APPLICATION No 5840 of 1995
MR AJ PATEL for petitioner
MR IM PANDYA for Respondent

10. SPECIAL CIVIL APPLICATION No 10778 of 1995
MR AJ PATEL for Petitioner
MR IM PANDYA for Respondent

11. SPECIAL CIVIL APPLICATION No 8002 of 1995
MR AJ PATEL for petitioner
MR IM PANDYA for Respodents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/10/2000

COMMON CAV JUDGEMENT

"THERE IS AN ESSENTIAL DISTINCTION BETWEEN THE COURT AND AN ADMINISTRATIVE TRIBUNAL. A JUDGE IS TRAINED TO LOOK AT THINGS OBJECTIVELY

UNINFLUENCED BY CONSIDERATION OF POLICY OR EXPEDIENCY BUT AN EXECUTIVE OFFICER GENERALLY LOOKS AT THINGS FROM THE STAND POINT OF POLICY AND EXPEDIENCY. THE HABIT OF MIND OF AN EXECUTIVE OFFICER SO FORMED CANNOT BE EXPECTED TO CHANGE FROM FUNCTION TO FUNCTION OR FROM ACT TO ACT. SO IT IS ESSENTIAL THAT SOME RESTRICTIONS SHALL BE IMPOSED ON TRIBUNALS IN THE MATTER OF PASSING ORDERS AFFECTING THE RIGHTS OF THE PARTIES."

"IT WAS NOT "LAW OF NATURE" IN THE SENSE OF THE LAW OF JUNGLE, WHERE THE LION DEVOURS THE LAMB AND THE TIGER FEEDS UPON THE ANTELOPE BECAUSE THE LION IS HUNGRY AND THE TIGER IS FAMISHED BUT THE HIGHER LAW OF NATURE OR THE NATURAL LAW WHERE THE LION AND THE LAMB LIE DOWN TOGETHER AND THE TIGER FRISKS WITH THE ANTELOPE."

"WHAT IS A CIVIL CONSEQUENCES LET US ASK OURSELVES BY PASSING VERBAL BOOBY TRAPES ? CIVIL CONSEQUENCES UNDOUBTEDLY COVER INFRACTION AND NOT MERELY PROPERTY OR PERSONAL RIGHTS BUT OF CIVIL LIBERTIES MATERIAL DEPRIVATION AND NON PECUNIARY DAMAGES. IN ITS COMPREHENSIVE CONNOTATION, EVERYTHING THAT AFFECTS A CITIZEN IN HIS CIVIL LIFE INFLICTS A CIVIL CONSEQUENCES."

#. Heard S/Shri A.J.Patel, Yogesh Ravani, P. J. Vyas, C.B.Dastoor, S.M.Shah, learned advocates for the petitioner in respective petitions and Mr.I.M. Pandya and Mr.L.R.Pujari, learned Astt. Govt Pleaders for the respondents in this group of petitions. In all group of petitions, wherein respondent authority has passed order while exercising powers under Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as `the Act' for short] are under challenge. Section 65 is relating to assumption of management of lands which remained uncultivated. In all these group of matters, RULE has been issued by this Court and interim relief has been granted by this Court which remains in operation till date.

#. The brief facts giving rise to each petition are as under :-

2.1 Special Civil Application No : 10309 of 1995, wherein, the order passed by the Deputy Collector, Choryashi Prant, Surat in Tenancy Revision Case No : 398 of 1990 dated 4th September, 1995 is under challenge. In

the present petitioner, the respondent authority has filed reply on 29th June, 2000.

2.2 In Special Civil Application No. 8361 of 1995, wherein order passed by the Deputy Collector, Viramgam Prant in Case No. 255 dated 27th July, 1995. In the present petition, the petitioner has filed further affidavit in support of petition and respondent authority has not filed any reply in the present petition.

2.3 In Special Civil Application No. 3107 of 1999, the order passed by the Deputy Collector in Appeal No : Gandhinagar in case No. 83 / 86 dated 1st August, 1992 is under challenge. The respondent authority has filed affidavit in the present petition.

2.4 In Special Civil Application No. 8039 of 1993, the order passed by the Deputy Collector, Modasa in case No. 7/ 93 dated 23rd June, 1993 and respondent authority has not filed any reply.

2.5 In Special Civil Application No. 1301 of 1994, the order passed by the Deputy Collector in case No. 1 / 1991 dated 29th September, 1993 is under challenge and no reply has been filed by the respondent authorities.

2.6 In Special Civil Application No. 4837 of 1995, the order passed by the Deputy Collector, Dabhoi dated 13th June, 1994 is under challenge and no affidavit in reply has been tendered by the respondent authorities.

2.7 In Special Civil Application No. 9880 of 1994, the order passed by the Deputy Collector, Dholka dated 29th June, 1994 is under challenge and no affidavit in reply has been filed by the respondent authority.

2.8 In Special Civil Application No. 8002 of 1998, the order passed by the Deputy Collector, Himmatnagar dated 20th July, 1998 is under challenge and no affidavit in reply has been filed by the respondent authorities.

2.9 In Special Civil Application No. 1305 of 1994, the order passed by the Deputy Collector, Gandhinagar dated 28th October, 1993 is under challenge and no affidavit in reply has been filed by the respondent authorities.

2.10 In Special Civil Application No. 5840 of 1995, the order passed by the Deputy Collector, Dabhoi dated 21st May, 1995 is under challenge and no affidavit in

reply has been filed by the respondent authorities.

2.11 In Special Civil Application No. 10778 of 1995, the order passed by the Deputy Collector, Patan dated 5th April, 1995 is under challenge and no affidavit in reply has been filed by the respondent authorities.

#. In all group of petitions, the main question which has been raised by the learned advocates for the respective petitioner is that while exercising powers under Section 65, the authority is duty bound to hold a detailed inquiry and the petitioner is entitled to reasonable opportunity to defend his case and without giving such opportunity by the authority, the order has been passed which adversely affected the right of the petitioners and the orders impugned in this group of petitions are against the principles of natural justice.

3.1 The Deputy Collector -the authority has relied upon the reports submitted by the RTS team and on that basis, the show cause notice has been issued to the petitioners and thereafter considering the material which was received from the RTS team, the Deputy Collector has proceeded in the matter in a manner has been issued to the petitioners calling upon to submit reply or any evidence from the petitioners and thereafter giving opportunity to the petitioner who remained present before the Deputy Collector and thereafter the Deputy Collector has passed the order after considering the evidence on record that the land in question is remained without any cultivation for the period suggested in the show cause notice and therefore considering this fact, the Deputy Collector is passing order under Section 65 because the land in question remained without any cultivation for the period specified in the show cause notice and the land in question has been vested with the State Government without any encumbrance upon the land. The procedure normally followed by the Deputy Collector in most of the cases, the reply of show cause notice has been submitted by the petitioner and thereafter remained personally present before the Deputy Collector and pointed out relevant defence by the petitioner but without considering the same, the Deputy Collector in almost cases relying upon the report submitted by the RTS team and passed order against the petitioners under Section 65 of the Tenancy Act. The question which has been raised before this Court that the petitioners are land owners cultivating the land in question since many years. The respondent authority has powers of assumption of management of the land which remained uncultivated or the

full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control, the State Government may after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive. Therefore, considering the relevant provisions, the State Government has power in case if it ultimately found from the record that the land has remained uncultivated or full and efficient use of the land has not been made for the purpose of agriculture on the ground not beyond his control then, the State Government after making such inquiry as it thinks fit declare that the management of such land shall be assumed. Therefore, the question which is arising is that in such inquiry what are the normal procedure or safeguards are necessary while determining the issue in question while passing any adverse order against the land holder. In light of the said provision, the fact of Special Civil Application No. 8361 of 1995, wherein the Deputy Collector, Viramgam has passed order under Section 65 of the Tenancy Act is required to be examined. In the present case,the RTS team has submitted the report in the Month of May, 1993 to the authority pointing out the fact that the land in question remained uncultivated for the period from 1984-85 to 1991-92. After receiving the report from the RTS team, a show cause notice dated 1st July, 1994 has been issued by the authority to the petitioners. In pursuance of the said show cause notice, hearing was fixed by the authority and also calling the petitioners to produce any documents and to submit the written submission against the said show cause notice. The petitioners before the authority has raised certain question that RTS team has no power to hold any inquiry or to examine the fact that whether the land in question which has been cultivated or not during the said period. The Second contention raised before the authority that a copy of the report of the RTS team and relying on the same, a show cause notice is came to be issued, has not been given to the petitioners along with show cause notice and no documents has been given to the petitioners and no documents have been given to the petitioners which were relied by the RTS team and subsequently, the same has been relied by the Deputy Collector. The third contention which has been raised before the authority that breach of condition which was interpreted by the RTS team is not proper and whatever materials which were collected by the RTS team to prove the fact that the land in question remained uncultivated during this period so that the material which has been recovered under the provisions of the Bombay Land Revenue Code that cannot be

considered to be conclusive proof of the evidence. The contentions which have been raised by the petitioner before the authority, were rejected by the authority only on the ground that they are not required to be accepted but no reasons in support of its conclusion has been given. The Deputy Collector has relied upon mainly on the report of RTS team and a copy of the Panipatrak wherein it was noted that the land in question remained without cultivation for the said period. The Deputy Collector has also considered that the petitioners have not produced any reliable evidence to the effect that the land in question was not remained without cultivation. Therefore, mainly, the Deputy Collector in almost all the cases relied upon the copy of the Panipatrak wherein it has been noted that the land in question remained PADTAR without cultivation. Therefore, considering the said evidence, the authority came to the conclusion that it amounts to breach of condition and therefore, the land in question is required to be assumed and the management of the land which remained uncultivated shall be assumed with the State Government. The petitioner in the present case has filed affidavit in support of their case, wherein it has been pointed out that the land in question had remained uncultivated and on that basis, the order came to be passed by the authority but now the land was being cultivated even on the date of which the impugned order was passed and even in village form No. 7 / 12, entry regarding crops grown in the land for all these years have also been shown in the said revenue record. The bare perusal of the said revenue record would clearly reveal that Juwar and Millet crops were and are being taken from the land in question. It is also contended in the said additional affidavit by the petitioner that Section 65 of the Tenancy Act can be pressed into service only if the circumstances indicated are found to be proved. It is also necessary to consider the position of the land as on the date of passing the order by the Deputy Collector and even subsequent events can be taken into consideration for the purpose of deciding the question as to whether the management of such land should be taken with the Government or not ? The petitioner has also produced the copies of the village Patrak of 7 / 12 wherein some of the entries were shown to the effect that crops of Juwar and millet have been cultivated.

3.2 In SPECIAL CIVIL APPLICATION NO : 10309 OF 1995, the proceeding has been initiated on the basis of the report of RTS team dated 23rd August, 1990 and on the basis, a show cause notice dated 16th October, 1993 has been served to the petitioner and thereafter, the petitioner

had remained personally present and pointed out that the land in question are situated near the land where some construction of the society has been carried out and because of that there was no security of crops and the Town Planning Scheme has been implemented. Therefore, it is not possible for the petitioner to cultivate the land in question as well as there was vehicular traffic on the land in question therefore, it is impossible to cultivate the land in question. After considering the said reply, the Deputy Collector, Choryashi Prant, Surat has only relied upon the report of the RTS team Panchnama and copy of the village form 7/12 and come to the conclusion that the land in question remained without cultivation. It is required to be noted that the copy of the Panchnama, report of the RTS team and material which were considered against the petitioner have not been communicated and served to the petitioner and no documents have been supplied by the Deputy Collector to the petitioner. No one was examined before the Deputy Collector to prove these evidence which have been relied on by the Deputy Collector and without giving any opportunity except hearing, the Deputy Collector has passed the order against the petitioner. In the present petition, reply has been submitted by the Deputy Collector and pointed out that said land in question was found as non cultivated land by the RTS team No. 8 during their visit of village Umra and therefore by letter dated 23-8-1990 proposal was made to initiate proceedings under Section 65 of the Tenancy Act. The Deputy Collector has further submitted in his reply that after considering factual aspect and representation made by the petitioner personally, it was found that land in dispute were found padtar land from the year 1986-87 and considering the village Form No. 7/12, no agricultural activities are carried out on the said land and therefore there was breach of provisions of Section 65 of the Tenancy Act and as a result, the order has been passed.

3.3 In SPECIAL CIVIL APPLICATION NO : 3107 OF 1999, the proceedings have been initiated on the basis of the RTS report and a show cause notice was served to the petitioner. In the hearing before the Deputy Collector, Gandhinagar, the Talati-cum-Mantri of Motera had remained present. In the said order, the Deputy Mamlatdar has relied upon Pani Patrak and come to the conclusion that the land remained barren and therefore the order has been passed against the petitioner. But before the Deputy Collector, no one was examined to prove the documents which were relied upon by the Deputy Collector. No copy of such documents were given to the petitioners which

were relied by the Deputy Collector but only a show cause notice on the basis of the report of RTS team and personal hearing was given except that no effective hearing was given by the Deputy Collector and order has been passed against the petitioner. In the present case, the petitioner had produced village form No. 7/ 12 wherein also, the corps of millet was shown and mentioned to have been cultivated on the land in question. Whereas in the reply filed by the Prant Officer, Gandhinagar aginst this petition, it has been stated that before the Deputy Collector, Gandhinagar, deposition of Talati was taken and it was found that the land remained uncultivated and therefore, the order has been passed against the petitioner inspite of the fact that notice was sent to the petitioner and the same was not received by the petitioner.

3.4 In SPECIAL CIVIL APPLICATION NO : 4837 OF 1995, the order has been passed by the Deputy Collector, Dabhoi on the basis of the report submitted by the RTS team and considering the village record Form No. 7/12 in respect of the land in question and therefore, show cause notice was issued to the petitioner. Panchnama was recorded on 17th May, 1993 wherein it was found that the land remained without cultivation and on that basis, the order has been passed by the Deputy Collector, Dabhoi. The contention of the petitioner in the present petition that the Talati cum Mantri has prepared report visiting the land in question and no reasonable opportunity of hearing was afforded to the petitioner and exparte order has been passed by the Deputy Collector and no notice has been served to the petitioner and the land in question remained in cultivation by the petitioner. However, it is pointed out that the land has been given to the society and necessary permission was obtained by the petitioner from the municipality. It is also the contention raised that the lands in question belongs to the old tenure and therefore, Section 65 is not applicable to the facts of the present case. The petitioner has also challenged the order in appeal but the Collector, Vadodara has decided that the powers have been exercised under Section 65 which are powers of the State Government and therefore, no appeal is maintainable but such orders can be challenged before this Court.

3.5 In SPECIAL CIVIL APPLICATION NO : 1301 OF 1994 wherein the Deputy Collector, Baroda has passed the order after receiving reports from the RTS team. A show cause notice was served to the petitioner and hearing was fixed

on 29th October, 1991. The report of the RTS team dated 17th July, 1993 and personal verification of the land in question was carried out on 28th July, 1993 and Panchnama was prepared on 29th August, 1992 wherein, it was found that the land in question is of the nature of Kotar and Khada and therefore, cultivation could not be possible since last 18 years and the order has been passed by the Deputy Collector, Baroda against the petitioner. The petitioner has produced on record the village Form No. 7/12 wherein cultivation for some of the years have been pointed out and the land in question being the Kotar and Khada and therefore explanation has been submitted by the petitioner that cultivation could not be possible. However, according to the petitioner after the land in question has been developed by undertaking some filling works on the land, the crop of Juwar / millet has been cultivated by the petitioner and land in question is declared under the open spera zone and for that, certificate from the Vadodara Urban Development Authority has relied upon and the same was produced by the petitioner and the Deputy Collector has relied upon report of the RTS team and Panchnama and passed the order against the petitioner.

3.6 In respect of SPECIAL CIVIL APPLICATION NO : 8039 OF 1993, the order has been passed by the Deputy Collector, Modasa, a show cause notice was served upon the petitioner and hearing was fixed. In the hearing the Talati cum Mantri was examined along with the record which was produced before the Deputy Collector and considering the evidence of the Talati-cum-Mantri and record of the Pani Patrak for the years in question, the Deputy Collector has come to the conclusion relying upon the personal visit of the RTS team dated 16th June, 1993 and ultimately passed order against the petitioner and the Deputy Collector has not believed the defence of the petitioners.

3.7 So far as SPECIAL CIVIL APPLICATION No. 9880 of 1994 is concerned, the Deputy Collector, Dholaka has passed order in the similar manner relying on the report of the RTS team dated 15th April, 1993 and show cause notice dated 7th June, 1993 was served to the petitioner and thereafter, the petitioner has given written reply and pointed out that each year land in question has been cultivated by the petitioner but because on the adjoining land, some of the societies are situated and looking to the fact that cultivation is found to be failure every year and therefore each year cultivation could not be possible. Therefore,the Deputy Collector as relied upon

the evidence of Circle Inspector, Dholka and relied upon the village Form No. 7 / 12 and ultimately passed the order against the petitioner.

3.8 In SPECIAL CIVIL APPLICATION NO. 8002 of 1998, the facts of the petition is that the petitioner owns and possesses land bearing Survey No. 5 part admeasuring acre 3-15 gunthas of village Motipura, Taluka Himmatnagar of District Sabarkantha. The petitioner has been trying to cultivate the said land since the time he came into possession of the aid land but because the land is uneven and contains lot of pebbles and ravines which render the land uncultiavable. Notwithstanding the aforesaid condition of the land of the petitioner, he tried to cultivate the land and make it cultivable. According to the petitioner, surrounding land have already been permitted to be converted into Non Agricultural use and therefore, the cultivation which the petitioner tried to do on the land, was ravaged by stray cattle and the crops grown in the land are practically destroyed by the cattle. According to the petitioner because of these circumstances, the petitioner was not able to cultivate the land regularly and peacefully. However, the petitioner has received notice dated 6th July, 1998 and pursuant to the said notice, the petitioner was required to show cause as to why the land should not be taken into management of the Government. Thereafter, the Deputy Collector has initiated inquiry wherein, statement of the petitioner was recorded on 12th April, 1998 and thereafter on 20th July, 1998, the Deputy Collector has passed the order under the provisions of Section 65 of the Tenancy Act. The said order is under challenge in this petition. The Deputy Collector, Himmatnagar has considered record which has been brought by the Talati and passed the impugned order against the petitioner. The documents and record which brought by the Talati though were not stand proved before the Deputy Collector, Himmatnagar by examining any witness on record and no opportunity of hearing was given to the petitioner to cross examine any witness in inquiry. The Deputy Collector, Himmatnagar simply relied upon the papers which brought by the Talati and passed the impugned order on 20th July, 1998.

3.9 In SPECIAL CIVIL APPLICATION No. 1305 of 1994, the facts of the case of the petitioner are that the petitioner is occupant of the land bearing Survey No. 330 admeasuring acres 2 - 4 gunthas of village Chandkheda, Taluka and District Gandhinagar which is situated in the middle of highly developed urban area of Chandkheda and Chandkheda is suburb of Ahmedabad on the

State High way leading from Ahmedabad to Mehsana. It is also submitted that since last about 20 years Chandkheda is fast developing and housing and commercial activities are being carried on since last many years. Number of housing societies and commercial complexes have come about in this area since last few years. However, some agricultural lands do exist in this area but cultivation of such lands is impossible because of rapid urbanization and also on account of depredation and ravages of standing crops resorted to by Rabaris and Bharwads and other people owning domesticated cattle in the area. Therefore, according to the petitioner, cultivation on the land in question is quite impossible on account of the aforesaid factors and the accordingly, the land in question remained uncultivated for some time and therefore,the Talati of the village might have made an endorsement in the revenue record that the land was "Padtar" i.e. uncultivated. Therefore, a show cause notice served to the petitioner by the Deputy Collector, Gandhinagar and thereafter, a detailed order has been passed by the Deputy Collector (Appeals), Gandhinagar on 28th October, 1993 under the provisions of Section 65 of the Tenancy Act with direction to take over management of the land in question belonged to the petitioner. Before the Deputy Collector, witnesses Govindbhai Ambalal Patel, Nathabhai Naranbhai Patel and Prahladbhai Fulabhai Patel and Kuvarben Maffatlal Desai and the Talati cum Mantri were examined but on behalf of the Department, no one was examined to prove the record on which the show cause notice was came to be issued by the Deputy Collector. However, looking to the evidence on record, the Talati cum Mantri who has produced Panchnama and has specifically deposed before the Deputy Collector that the land has been cultivated in each year by the petitioner. But the Deputy Collector has not believed this evidence and passed the order on 28th October, 1993 against the petitioner while exercising the powers under Section 65 of the Tenancy Act. The Deputy Collector has relied upon the Panchnama dated 11th October, 1993 though the said Panchnama was not proved before the Deputy Collector.

3.10 So far as SPECIAL CIVIL APPLICATION NO. 5840 of 1995 is concerned, the petitioner had purchased the lands bearing Survey No. 212, 986/1, 986/2 and 982 of village Limda, Taluka Vaghodia, district Baroda by registered sale deed dated 21-10-1988 and since then the petitioners have been cultivating the lands in question as owners and occupants of the land. The mutation entries were made in the village Form No. 6 from time to time in respect of the transactions of sale etc. According to the

petitioner,the said land never remained uncultivated in all the years. However, some persons who were interested in grabbing the lands of the petitioners appeared to have managed to see that in revenue record, the lands are shown to be uncultivated since the year 1990-91. According to the petitioners, some persons appear to have made applications to the Mamlatdar stating therein that the lands have not been cultivated by the petitioners since 1990-91 and therefore, the petitioners were served with the show cause notice dated 23/30th September, 1993 calling upon the petitioners to show cause as to why the lands should not be taken over by the State Government. Written reply was submitted on 21st March, 1995 and thereafter, ultimately the Deputy Collector has passed order on 22nd May, 1995 directing that management of the lands of the petitioner be assumed by the State Government. This order has been taken by the petitioner before the Gujarat Revenue Tribunal in revision application No. 224 of 1995 but by order dated 4th July, 1994, the Tribunal has returned the revision application to the petitioners for being presented before the appropriate forum as the tribunal has no jurisdiction to entertain such revision application. The petitioner has produced voluminous record in the petition. The Deputy Collector, Dabhoi has passed the order. Before the Deputy Collector, the petitioner has produced written reply affidavit and receipt for seeds and fertilizers. The Deputy Collector has relief upon the extract of Form No. 7/12 wherein entry has been made by the concerned officer that the land in question remained without cultivation. No one was examined before the Deputy Collector to prove the said documents and not only that but even report which as been prepared by the Mamlatdar, Vaghodia on the basis of which the show cause notice was issued and inquiry was initiated but the said record so relied has not been proved before the Deputy Collector by examining the Mamlatdar, Vaghodia or any other witness and the Deputy Collector has simply relied upon the record as it is and passed the order. Not only that but the the documents which were produced by the petitioner has not been believed by the Deputy Collector without any contrary legal evidence on record. The Deputy Collector has relied upon the extract of Form No. 7 / 12 and Pani Patrak as main evidence against the petitioner and came to the conclusion and passed the order under Section 65 of the Tenancy Act dated 22nd May, 1995.

3.11 In SPECIAL CIVIL APPLICATION NO. 10778 of 1995, the facts of the petition are that the petitioner is the owner of the lands bearing Survey No. 359 and 373 admeasuring 0 acre 36 gunthas and 0 acre and 16 gunthas

of village Hansapur, Taluka Patan, District Mehsana. According to the petitioner that one Mulchandbhai Nagardas Pate who made application to the Mamlatdar, Patan informing him that the petitioner was not carrying on agricultural operations on the land in dispute and therefore, the said lands are required to be forfeited to the Government under Section 65 of the Tenancy Act. In pursuance of the aforesaid application submitted by said Mulchandbhai Patel, the Circle Inspector, Patan drew a Panchnama in presence of two Panchas in respect of the position of the lands in dispute and Circle Inspector has served notice dated 21st June, 1993 to the petitioner and the petitioner has submitted reply to the Circle Inspector but thereafter, the Circle Inspector, Patan made a report to the Mamlatdar, Patan on 15th July, 1993 for initiating further proceedings in respect of the lands of the petitioner. Thereafter the Mamlatdar, Patan made report to the Deputy Collector and requested the Deputy Collector to initiate the proceedings under Section 65 of the Tenancy Act. Thereafter the Deputy Collector, Patan has issued show cause notice to the petitioner dated 30th August, 1993. Before the Deputy Collector, statements of all the persons were recorded and the statement of Mulchandbhai Patel was recorded on 30th August, 1993. Thereafter on 5th April, 1995,the Deputy Collector has passed order directing management of the lands of the petitioner to be assumed by the State Government under Section 65 of the Tenancy Act. In the present petition, the petitioner has produced Panchnama dated 7th June, 1993 and the statement of the petitioner dated 14th July, 1993 recorded by the Circle Inspector, Patan and the report of the Circle Inspector, Patan and the letter of the petitioner dated 19th July, 1993 so also the Panchnama dated 22nd July, 1993. Thereafter, a show cause notice dated 9th August, 1993 has been produced on record and the petitioner was examined by the Deputy Collector on 30th August, 1993 and said Mulchandbhai Patel was also examined on the very same day and thereafter the deputy Collector has passed order on 5th April, 1995. The Deputy Collector has relied upon the affidavit of the owner of the adjoining land as it is and passed the impugned order. The record which has been submitted by the Mamlatdar has not been proved before the Deputy Collector by leading oral evidence and giving opportunity of cross examining such persons. The Deputy Collector has relied upon the statement or report submitted by the Mamlatdar though the same was not proved before him and despite this, relying on the same, the order has been passed by the Deputy Collector while exercising the powers under Section 65 of the Tenancy Act.

#. In all the petitions, the orders passed by the Deputy Collector concerned against the respective petitioner while exercising the powers by the State Government under Section 65 are under challenge. Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 reads as under.

"65. Assumption of management of lands which remained uncultivated. -

(1) It if appears to the [State] Government that for any two consecutive years, any land is remained uncultivated or [the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever no beyond his control] the State Government may after making such inquiry as it things fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

[(1A) The assumption of management of land under sub-section (1) on the ground that the full and efficient use of the land has not been made for the purpose of agriculture shall be for such such period as the State Government may from time to time fix, so, however, that such period shall not exceed ten years in the aggregate.]

(2) On the assumption of the management, such land shall vest in the [State] Government during the continuance of the management and the provisions of Chapter IV shall MULTATIS MUTANDIS apply to the said land:

[Provided that the Manager may in suitable cases give such land on lease at rent even equal to the amount of its assessment :

Provided further that, if the management of the land has been assumed under sub section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chgapter II or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed.]

#. Mr.A.J.Patel, Mr.P.J.Vyas, Mr.S.M.Shah, Mr.Dastur and

Mr.Ravani, learned advocates for the respective petitioners have mainly contended before this Court that an inquiry was required to be conducted by the Deputy Collector wherein effective and reasonable opportunity has not been given to the petitioners and documents as well as material which have been relied by the Deputy Collector have not been disclosed to the petitioners and no copy of such documents and material have been given to the petitioners. Not only that the Deputy Collector has not given any effective hearing and in the inquiry so conducted, no opportunity of cross examine any of the witness has been given to the petitioners. Not only that, in inquiry, relevant documents and material which were relied on have not been found to be proved by the Deputy Collector by examining any witness in inquiry and defence of the petitioner have been totally ignored by the Deputy Collector and therefore, the orders have been passed by the Deputy Collector in all cases are contrary to the principles of natural justice. It is also submitted that orders passed by the authority is totally unreasonable merely passed on the ground that the defence of the petitioners have not been believed or relied for that the Deputy Collector has not given any detailed reasons in support of his conclusion. It is also contended before this court that lastly in all cases, the Deputy Collector has relied upon the report of the RTS team submitted to the Deputy Collector and relying upon that show cause notice was issued by the Deputy Collector but copy of the said report along with documents have not been supplied to the petitioner and therefore, effective reasonable opportunity has not been given by the Deputy Collector while adjudicating the issue while exercising the powers under Section 65 of the Tenancy Act and therefore, all the orders have been passed by the Deputy Collector while exercising powers under Section 65 are required to be set aside. It is also contended before this Court by the learned advocates of the petitioners that the lands belong to the petitioners and it is not the lands belong to the State Government and therefore, if any breach has been found to have been committed by the petitioners then, it is the duty of the Deputy Collector to consider that whether such default on the part of the petitioners whether it was beyond the control of the petitioner or not and that aspect has not been gone into by the Deputy Collector inspite of the fact that specific defence raised by the petitioners that it was not possible looking to some circumstances to cultivate the land in question because it was beyond the control of the petitioners. Therefore, according the learned advocates for the petitioners, orders passed by the Deputy Collector are totally in disregard of the

principles of natural justice. Mr.A.J.Patel, learned advocate has relief upon the decision of Apex Court in case of RAMANLAL V. STATE OF GUJARAT in 10 GLR 117, learned Advocate Mr.Patel has relied upon the observations of the Apex Court in para 17 which is reproduced as under.

"Once the matter can be gone into the provisions of the additional part will have to be examined for reasonableness. Here the difficulties are many for the State. We mention only a few of them. There is nothing to show what are the requirements of action. The deprivation of the property is made to depend upon the subjective determination of an officer. Take for example this case itself. Action is taken under the impugned part of Section 65. Agricultural includes growing of grass, and other definitions emphasis the need of growing grass by including the operation in the word `cultivation'. Grass is as important for agricultural communities as food grains and fruits. Without the former the cattle must die just as without the latter there would be human starvation. The Act, therefore, gives important to both, naming grass along with crops and garden produce and horticulture. If grass is being grown as an agricultural operation, one cannot just take grass lands and convert them into orchards. Similarly orchards cannot be taken and turned into pastures. Before action is taken it must be quite clearly established that the kind of agriculture which is being carried on inefficiently or that there is some distinct advantage in the new management to carry on the new kind of agriculture. The Deputy Collector merely thinks that the land can grow grain or fruits. But so can any grass land or pasture. There is nothing to show that from an agrarian point of view grass grown in these lands was not necessary at all or was being inefficiently grown. A person is entitled to hold and enjoy his property as he thinks best. If regard is to be had for the benefits of society a clear law and a clear determination are required. Both the elements are missing. It is not said in what circumstances cultivation can be said to be inefficient. It is also not said what would be considered efficient cultivation and what inquiries are needed to determine this. It is also not said under what circumstances different kind of cultivation can be imposed upon

the land. The law does not provide for an opportunity to the cultivator to change his cultivation from one kind to another. It does not even require that the management should be efficient. After taking over the lands the Manager can lease them to others but it is not stated what conditions they have to observe. Merely on the opinion of an officer, land may be taken away because the officer thinks that wheat is to be preferred to fruits and fruits to grass and so on and so forth. The management is taken over without any clear limit of time. In these circumstances, it is difficult to uphold the declarations made in these cases or to given them the protection of Article 31A(1)(b)".

#. Mr. Patel has relied upon unreported decision rendered in Special Civil Application No. 1267 to 1269 of 1992 dated 1st September, 1993. Para 5 and 6 of the said decision are relied by Mr.Patel which runs as under.

"5. On plain reading the aforesaid provision of Section 65 of the Tenancy Act, it is clear that the management of the land remaining uncultivated for consecutive two years can be assumed after making such inquiry as it thinks fit. In these cases, Talati-cum-Mantri who has recorded the entries to the effect that the lands remained uncultivated for consecutive two years has not bee examined nor the petitioner had any opportunity to cross examine such Talati-cum-matri. The Talati-cum-Mantri who was examined before the Deputy Collector has supported the version of the petitioners that in the current year the land was cultivated. In the facts of the case, no just and proper inquiry has been held to come to the conclusion that for two consecutive years the land had remained uncultivated. The petitioners have categorically and clearly stated that the lands did not remain uncultivated for any year as alleged. In the facts of the cases, in my view inquiry as contemplated under Section 65 of the Tenancy Act has not been held before assumption of manager of the lands in question.

6. Mr.A.J. Patel,learned advocate appearing for the petitioners has contended that it was necessary for the concerned authority to examine the Talati-cum-Mantri who has made the entries

regarding land being uncultivated so as to enable the petitioners to cross-examine Secretary and prove their case. In my opinion, there must be just and proper as provided under Section 65 of the Tenancy Act, for, lands a source of livelihood of the petitioners are to be taken away on basis of such inquiry and consequent order. It is therefore, enjoined upon the authority to hold an effective and fair inquiry, giving full opportunity to the persons like petitioners,whose lands are sought to be assumed on the ground of it being uncultivated for two years. In the facts and circumstances of the case, the authorities did not examine this aspect of the case from angle of fair and proper inquiry as provided in Section 65 of the Tenancy Act."

#. The learned advocate Mr.A. J. Patel has also relief upon unreported decision of this Court in Special Civil Application No. 3577 of 1992 and 3991/92 dated 6th June, 1993. The relevant observations of this Court [Coram : D.G.Karia, J.] are quoted as under.

"The plain reading of the aforesaid provisions of Section 65 of the said Act makes it clear that the State Government, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed, if the land has remained uncultivated for any two consecutive years or use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control. The provisions of Section 65 contemplates that the land, which is ordinarily used for the cultivation purpose should not remain idle or uncultivated for two years continuously. If the land in question is not the agricultural land and it is permitted to be used for non-agricultural purpose, the provisions of section 65 cannot be pressed into service. It is not understood as to how it was open for the Government to assume powers under Section 65 of the Act, after the Government granted exemption under the Ceiling Act and the District Panchayat granted N.A. permission under the provisions of the Bombay Land Revenue Code. Section 65 of the said Act provides that the assumption of the management for effective cultivation of the land can be resorted to only if the land is to continue to be agricultural land. In the present case, the land has admittedly ceased to be the

agricultural land on grant of exemption under Section 20 of the Ceiling Act and thereafter on grant of permission for its non-agricultural purpose use. Thus, the land in question in the instant case ceased to be the agricultural lands. Therefore, the impugned orders assuming the management of the lands on the ground of the lands remaining uncultivated for two years cannot be sustained."

#. As against, Mr. I. M. Pandya, learned AGP has submitted that powers which have been exercised by the Deputy Collector under Section 65 is legal and valid and effective opportunity of hearing has been given to the petitioners. Mr.Pandya, learned AGP has also submitted before that before initiating the proceedings by the Deputy Collector, the Deputy Collector has relied upon the report submitted by the RTS team which was prepared having visited the place and / or land in question. Thereafter, the Deputy Collector has issued show cause notice and also called the petitioners to submit their reply if any and thereafter considering the reply and report of the RTS team, the Deputy Collector has come to his own conclusion relying the said evidence and therefore there is no denial of any opportunity to the petitioners and therefore the orders passed by the Deputy Collector in all the cases are reasonable, just and proper and not contrary to the principles of natural justice. Therefore, all the petitions are required to be dismissed.

#. I have heard the learned advocates appearing on behalf for respective petitioner in each petition and the learned Asstt. Govt. Pleader for the respondent authorities. The question is that inquiry which has been contemplated under the provisions of Section 65 it has to be understood in light of the principles of the natural justice. Inquiry cannot be considered as formal or merely empty formality for arriving at a particular conclusion. While exercising the powers of the State Government by the Deputy Collector, he should have hold proper inquiry because while exercising the powers under Section 65, especially when the Deputy Collector is deciding the right of the petitioner or to decide or adjudicate the question whether the land in question has remained without cultivation or not. That determination of this issue, the Deputy Collector has to consider various aspects keeping in mind the relevant provisions of Section 65 of the Act. It is noted that Section 65 clearly provides that if the land in question remains uncultivated on the ground that it is beyond the control

of the petitioner or the land holder, it cannot be considered to be a ground for initiating the inquiry and to passe the order under Section 65. So these are the reasons which were required to be kept in mind while exercising the powers under Section 65 of the Act. The inquiry initiated against the land holders who are the owners of the land and result of the inquiry is to deprive the person from the land in question because the land vested with the Government. Therefore, when any inquiry if it is ultimately likely to result into deprivation of livelihood of the person/s then it is the responsibility of the authority to give just, proper, adequate and reasonable effective opportunity to the persons against who the inquiry has been initiated by the Deputy Collector. Inquiry which is suggested under Section 65, it is not exparte inquiry but it requires to give opportunity to the persons who is the holder of the land in question. If there no provision is made under the statute about inclusion of principles of natural justice even then the same has to be read impliedly and during the course of inquiry under the relevant provisions, principles of natural justice should be followed in initiating such proceedings.

##. The right to life includes the right to livelihood. The Sweep of the right of life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by imposition and execution of the death sentence, except according to the procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. The view taken by Apex Court in case of Oga Tellies Vs. Bombay Municipal Corporation reported in A.I.R.1986 180 in respect of the procedure prescribed by law for the deprivation of right

conferred by Article 21 must be fair, just and reasonable. The relevant observations made by the Apex Court in para 39, 40 and 41 are as under :-

"It is far too well settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Art 21 must be fair, just and reasonable. (See E.P. Royanppa Vs State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974) 2 SCR 621 : (AIR 1978 SC 597) ; M.H. Hoskot V. State of Maharashtra, (1979) 1 SCR 1 SCR 192 : (AIR 1978 SC 1548); Sunil Batra V. Delhi Administration, (1979) 1 SCR 392 : (AIR 1978 SC 1675); Sita Ram v. State of U.P. (1979) 2 SCR 1085 : (AIR 1979 SC 745); Hussainara Khatoon I. V. Home Secretary, State of Bihar, Patna (1980) 1 SCC 81 : (AIR 1979 SC 1360); Sunil Batra II v. Delhi Adminstration (1980) 2 SCR 557 : (AIR 1980 SC 1579); Jolly George Verghese Vs. Bank of Cochin, (1080) 2 SCR 913, 921-922 : (AIR) 1980 SC 470 at p. 475); Kasturi Lal Lakshmi Raeddy vs. State of Jammu & Kashmir, (1980) 3 SCR 1338, 1356 : (AIR 1980 SC 1992 at p. 2000); and Francis Coiralie Mullin vs. Administrator, UYnion Terrioroty of Delhi(1981), 2 SCR 516, 523-524 : (AiR 1981 SC 746 at p .750)."

40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law an procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay, Procedure which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has therefore, to be tested by the application of two standards : If any action must be within the scope of authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable

the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that `The Influence of Remedies on Rights' (Current Legal Problems, 1953, Volume 6), "from the point of view of the ordinary citizen, it the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work". Therefore, "He that takes the procedural sword shall perish with the sword" Per Frankfurter J. in Vitarelli V. Seaton, (1959) 3 Law ED 2nd 102".

41. Justice K.K.Mathew points out in his article on "The Welfare State, Rule of Law and Natural Justice', which is to be found in his book `Democracy, Equality and Freedom'. that there is "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power wherever it is found". Adopting that formulation, Bhagwati J. speaking for the Court, observed in Ramana Dayaram Shetty V. International Airport Authority of India, (1979) 3 SCR 1014, 1032 : (AIR 1979 SC 1628 at p.1636), that it is "unthinkable that in a democracy governed by the rule of law, the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirements."

##. Similarly, the Apex Court has also considered in case of M/s TRAVNCORE RAYON LTD vs UNION OF INDIA 1971 Supreme Court 862 wherein, it is observed by the Apex Court that judicial power is exercised by the authority normally performing the executive or administrative function, the Apex Court insists upon disclosure of reasons in support of the order on two grounds one that party aggrieved in proceeding before the High Court or Supreme Court has an opportunity to demonstrate that the reasons which pursued the authority to reject his case, were erroneous. The other that the obligation to record reasons operates as deterrent against the possible betrayal action by the executive authority invested with judicial power. The habit of mind an executive officer so formed cannot be expected to change from function to

function or from act to act so it is essence that some restrictions shall be imposed on tribunal in a matter of passing orders affecting the rights of the parties.

##. The inquiry which has been understood by the Apex Court in normal cases which has been observed by the Apex Court in case of MEENGLAS TEA ESTATE VS. THE WORKMEN, AIR 1963 Supreme Court 1719, it has been observed by the Apex Court that it is observed by the Apex Court that it is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant question by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repeal the charge without first making it out against him. The inquiry must be vitiated because it was not held in accordance with principles of natural justice. Similarly a view taken by the Apex Court in case of SUR ENAMEL AND STAMPING WORKS LTD VS. THE WORKMEN reported in 1963 Supreme Court page 1914. The relevant observations in Para-4 are as under :-

"In support of the appeal against this order Mr.Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi. Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were confronted with the reports of the supervisors and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the enquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely." In our opinion, it would be a misuse of the words to say that this amounted to holding of proper inquiry. It has been laid down by this Court in

a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined - ordinarily in the presence of the employee - in respect of the charges, (iii) the employee is given a fair opportunity to cross examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer record his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the domestic Tribunal."

##. The question of principles of natural justice is required to be followed by the executive or administrative authority at the time of taking decision

or determination any issue which may adversely affect the right of persons or it may have adversely civil consequences even in such circumstances, the principles of natural justice of giving reasonable effective opportunity to the persons has been considered by the Apex Court in case of SRIMATI MENKA GANDHI VS. UNION OF INDIA reported in AIR 1978 Supreme Court 597. The Apex Court has also considered in the said decision that if suppose rule or Section is silent about principles of natural justice even though, justice of common law will supply the omission of legislature. The following observations of the Apex Court are quoted as under :-

"32. It is well established that even where there is no specific provision in a statue or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa Vs. Dr.(Miss) Binapani Dei (AIR 1967 SC 1269 at p. 1271) in the following words :

"The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. it is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would,therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person,duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

33. In England, the rule was thus expressed by Byles J. in Cooper V. Wandsworth Board of

Works : (1863) 14 CB (NS) 180 :

"The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam (says God), "where art thou ? Has thou not eaten of the tree whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."

37. It appears to me that even executive authorities when taking administrative action which involves any deprivations of or restrictions on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness or unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

##. Recently, this Court [Coram : A. N. Devecha, J.] has considered the same question in case of of VASRAM LAVABHAI PATEL VS. STATE OF GUJARAT reported in GLH (UJ) 6, wherein it has been observed that it is settled legal position that a person performing such quasi judicial function is required to observance principles of natural justice pre supposes supply of the material relied upon by or on behalf of the quasi judicial authority for the purpose of coming to the conclusion in the matter against the affected party.

##. It is also necessary to consider one another aspect in the matter that in all group of cases, allegation of committing breach of Section 65 in respect of the year prior to about 5 to 10 years from the date of show cause notice. Therefore, if assumption proceedings under Section 65 has been initiated after unreasonable period, even though the order of assumption is required to be quashed. In all these petitions before this Court, this is also important question that in almost all cases, the RTS inquiry has been initiated in respect of non cultivation of the land in question prior to 5 / 10 years of period from the date of issuing of show cause notice. Therefore, view taken by this Court (Coram : D.J.KARIA,J.) in case of AMRATLAL DAHYABHAI Vs STATE OF

GUJARAT reported in 1994 (1) GLH (UJ) 9, wherein it has been observed by this Court that the holder of the land must be heard before the order under Section 65 of the Tenancy Act is made. This is necessary because without hearing the land holders, it would not be possible to reach a proper conclusion as to whether the land remained uncultivated or whether fully or efficient use of it was not made on account of any default of the holder. It is also held that the assumption proceedings initiated after unreasonable period even though the order of assumption is required to be quashed.

##. In the present group of petitions, the important question is to interpret Section 65 especially in respect to `inquiry' which has been contemplated under the said provisions, therefore, the inquiry which has been contemplated under the said provisions is required to be interpreted while keeping in mind the relevant principle of interpretation of statute and also considering the object of enactment of Section 65 of the Tenancy Act and relevant observations made by the Apex Court in case of RAMANLAL GULABCHAND SHAH v. STATE OF GUJARAT reported in 10 GLR page 117. The Apex Court in above referred case has considered the object of Tenancy Act which is reproduced as under :-

> "And whereas on account of the neglect of a landholder or disputes between a landholder and his tenants, the cultivation of his estate has seriously suffered, or for the purpose of improving the economic and social conditions of peasants to ensuring the full and efficient use of land for agriculture, it is expedient to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural labourers and artisans in the Province of Bombay and to make provisions for certain other purposes hereinafter appearing; it is hereby enacted as follows :"

Thereafter, it is also necessary to consider the relevant observations made by the Apex Court in the very judgment which are as under :-

> "Once the matter can be gone into the provisions of the additional part will have to be examined for reasonableness. Here the difficulties are

many for the State. We mention only a few of them. There is nothing to show what are the requirements of action. The deprivation of property is made to depend upon the subjective determination of an officer. Take for example, this case itself. Action is taken under the impugned part of Sec. 65. Agriculture includes growing of grass, and other definitions emphasis the need of growing grass by including the operation in the word `cultivation'. Grass is as important for agricultural communities as food grains and fruits. Without the former the cattle must die just as without the latter there would be human starvation. The Act, therefore, gives importance to both, naming grass along with crops and garden produced and horticulture. If grass is being grown as an agricultural operation, one cannot just take grass lands and convert them into orchards. Similarly orchards cannot be taken and turned into pastures. Before action is taken it must be quite clearly established that the kind of agriculture which is being carried on inefficiently or that there is some distinct advantage in the new management to carry on the new kind of agriculture. The Deputy Collector merely thinks that the land can grow grain or fruits. But so can any grass land or pasture. There is nothing to show that from an agrarian point of view grass grown in these lands was not necessary at tall or was being inefficiently grown. A person is entitled to hold and enjoy his property as he thinks best. If regard is to be had for the benefits of society a clear law and a clear determination are required. Both the elements are missing. It is also not said what would be considered efficient cultivation and what inquiries are needed to determine this. It is also not said under what circumstances different kind of cultivation can be imposed upon the land. The law does not provide for an opportunity to the cultivator to change his cultivation from one kind to another. It does not even require that the management should be efficient. After taking over the lands the Manager can lease them to others but it is not stated what conditions they have to observe. Merely on the opinion of an officer, land may be taken away because the officer thinks that wheat is to be preferred to fruits and fruits to grass and so on and so forth. The management is taken over without any clear limit of time. In these

circumstances it is difficult to uphold the declarations made in these cases or to give them the protection of Article 31A(1)(b)."

Recently, the Apex Court in case of QUARRY OWNERS ASSOCIATION V. STATE OF AND OTHERS reported in 2000 AIR Supreme Court Weekly page 3015 has considered the interpretation of statutes - words in statute and dynamic meaning which give full thrust and satisfaction to achieve objectivity intended by legislature to be adopted. Relevant observation of the said decision of the Apex Court in as under :-

31. ..... Every word of a language is impregnated with and is flexible to connote different meaning, when used in different context. That is why it is said, words are static but dynamic and Courts must adopt its that dynamic meaning which uphold the validity of any provision. This dynamism is the cause of saving many statues of it being declared void, it dissolves the onslaught of any rigid and literal interpretation, it gives full thrust and satisfaction to achieve the objectivity which the legislature intended. Whenever there are two possible interpretations, its true meaning and legislature's intent has to be gathered, from the `Preamble', Statement of Objects and Reasons and other provisions of the same statute. In order to find true meaning of any word or what the Legislature intended, one has to go to the principle enunciated in the case (1584) 76 ER 637 : 3 Co Rep 7a, 9.7, which laid down the following principle as early in the sixteenth century. (1) What was the law before making of the Act; (2) What was the mischief or defect for which the law did not provide; (3) What is the remedy that the Act has provided; and (4) What is the reason of the remedy. The Court must adopt that construction which suppresses the mischief and advances the remedy. This Court has followed this principle in Bengal Immunity Co. Ltd. Vs. State of Bihar, AIR 1955 SC 661 (674); Commr. of Income Tax, Patiala V. M/s Shahzada Nand & Sons, AIR 1966 SC 1342 (1347); M/s Sanghvi Jeevraj Ghewar Chand vs. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union, AIR 1969 SC 530 (533), : (1969 Lab IC 530); Union of India V. Sankalchand Himatlal Sheth, AIR 1977 SC 2328 *2358) : (1977 Lab IC 1857) and K.P.Varghese v. Income tax Officers, Ernakulam,

AIR 1981 SC 1922 (1929) : (1981 Tax LR 1448)."

##. I have considered the submissions of the learned advocates for the parties. I have also considered the citations and judgments cited before this Court by the respective advocate and have also considered the some of the decisions of the Apex Court wherein, principles of natural justice and interpretation of statute has been considered in detail. The facts remains that while exercising the powers by the Deputy Collector under Section 65 of the Tenancy Act, a show cause notice which has been issued by the Deputy Collector to the land holder on the basis of receiving report from RTS team. The report of RTS team has been prepared on the basis of personal visit to the place where the land is situated. Not only that but RTS team has also collected the evidence from Panchnama, village form, pani patrak and other evidence to prove the fact that the land remained uncultivated for the respective years. After taking all the relevant evidence, documentary evidence as well as the statement and Panchnama, all the persons at the time of visiting the place wherein the land is situated and copy of the village form, pani patrak has been collected by the RTS team. At that occasion, undisputedly the land holder was not remained present when such inquiry was conducted by the RTS team. So one fact is that RTS team is collecting the evidence behind the back of the land holder. The RTS team after collecting the evidence and preparing the evidence about the Panchnama, report of the Talati cum Mantri and Mamlatdar, statement of the concerned persons, copy of the village form No. 7 / 12, copy of the pani patrak and other evidence are collected and received by the RTS team behind the back of the land holder. On the basis of the said documents, which have been collected by the RTS team has been submitted to the authority namely the Deputy Collector with detailed report wherein it has been pointed out that looking to the evidence, the land in question remained uncultivated of the respective years. After receiving the said report from RTS team, the Deputy Collector has issued show cause notice to the land holder but along with said show cause notice, a copy of the said report, which has been prepared by the RTS team and the other requisite documents are not supplied to the land holder with said show cause notice. The Deputy Collector had merely issued show cause notice on the basis of the said report of RTS team but copy of the report prepared by the RTS team and relevant documents and material were not supplied. The land holder in absence of report of the RTS team and the material and documents on which the

reliance was placed, and the Deputy Collector wanted to have answer or explanation of show cause notice from the land holder. Thus it is a clear violation of principles of natural justice because how the land holder can defend or give explanation of the show cause notice effectively in absence of the report of the RTS team along with material and documents which have been collected by the RTS team behind the back of land holder. Therefore, if any reply or explanation even if it is tendered by the land holder, that cannot be considered to be an effective and reasonable opportunity has been given by the Deputy Collector. That one another important aspect which requires to be noted here is that after reasonable reply from the land holder, the Deputy Collector had fixed the matter for hearing and calling the land holder to remain personally present in such inquiry and at that time merely right of representation has been given to the land holder but even at that occasion also, a copy of the report prepared by RTS team along with documents and material were not supplied to the land holder. Not only that but even during the course of inquiry, the Deputy Collector has not examined any persons either Talati cum Mantri or Mamlatdar to prove the report and materials as well as the documents which were collected by the RTS team in inquiry. No right of cross examination has been given to the land holder and merely right of oral representation has been given to the land holder during the course of inquiry and therefore, the Deputy Collector has decided the matter after relying the report which has been prepared by RTS team along with the material and document which were annexed with the report and considering the oral representation of the land holder come to the conclusion that Section 65 has been violated. Such procedure to my mind is totally contrary to the principles of natural justice inasmuch as the decision arrived by the Deputy Collector to deprive the persons of their respective lands in question which are livelihood of the land holder, therefore, the right to life and right to livelihood are required to be protected before passing any adverse orders and reasonable, proper effective opportunity is minimum barest requirements of principles of natural justice. The said procedure apparently unreasonable and contrary to the safeguard which has been provided under the principles of natural justice. Why I am suggesting a detailed inquiry, the reasons are that Section 65 does not suggest for formal inquiry for coming to such conclusion. But it is an inquiry wherein the authority has to come to the conclusion keeping in mind that it appears that for any two consecutive years any land is remained uncultivated and by the land holders the full and efficient use of the

land has not been made for the purpose of agricultural through default of the holder or any other cause whatsoever not beyond his control. Therefore, during the course of inquiry, important aspect is to be considered is that whether full and efficient use of the land has been made by the land holder and what are the circumstances which are considered to be beyond his control for not cultivating the land in question for two consecutive years. Therefore, it is not empty formal inquiry but in such inquiry, the authority has to take into account all these aspects and then he has to come to the conclusion and for that in absence of report of RTS team, absence of material and documents which were collected by the RTS team and non examination of witnesses during the course of inquiry to prove such report along with materials and documents which have been collected by the RTS team behind the back of the land holder and not to given right of cross examination of such persons who has to prove the report and the material and documents, according to my opinion, the procedure which has been been adopted in all these group of matters by the Deputy Collector is totally contrary to principles of natural justice. I have perused the orders passed in respective petition passed by the Deputy Collector concerned and in none of the case, the Deputy Collector has given copy of the report prepared by the RTS team and copy of the material and documents which were collected by the RTS team along with show cause notice which has been came to be issued by the Deputy Collector. More over, it is also noted that no one has been examined in the inquiry to prove any documents or report or Panchnama even though the Deputy Collector has relied upon the report, documents and material so also the Panchnama to come to such conclusion which has adversely affected the land holder. Therefore procedure itself is contrary to the principles of natural justice and according to my opinion, the inquiry so contemplated under Section 65 of the tenancy Act is not merely a formal inquiry but the legislature suggested a regular detailed inquiry which has to be understood in normal sense of inquiry which has been considered by the Apex Court in two cases reported in AIR 1963 Supreme Court page 1719 and 1914 referred above. Therefore, after considering all these aspects of the matters, according to my opinion, the impugned orders which have been passed by the Deputy Collector in all these petitions are required to be quashed and set aside.

##. In the result, all the petitions are allowed and the impugned orders challenged in each petition are hereby quashed and set aside. Rule is made absolute in each petition accordingly. Considering the facts and

circumstances of the case, no order as to costs.

Date : 12/10/2000 [H. K. RATHOD, J.]

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